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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.W.P. No.11577 of 1988
Date of decision: 15.11.2007

Krishan Singh Rana **...Petitioner**

Versus

State of Punjab and others **...Respondents**

CORAM: HON'BLE MR.JUSTICE RAJESH BINDAL

Present: Mr. Manu Bhandari, Advocate for the petitioners

Mr. Ram Lal Gupta, Additional Advocate General, Punjab for respondents No.1 to 3.

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RAJESH BINDAL, J.

The case set up in the petition is that petitioner was working as Camp Clerk in the office of Assistant Excise and Taxation Commissioner, Ludhiana along with respondents no.4 and 5. Petitioner is admittedly senior to the private respondents. In exercise of powers conferred under Article 309 of the Constitution of India, Punjab State Assistant Grade Examination Rules, 1984 **(** for short "the Rules) were framed, which provided for eligibility for promotion to the post of Assistant. Rule 4 of the Rules provided that in addition to the fulfillment of the qualifications and experience prescribed for appointment by promotion to the post of Assistant, a candidate was required to qualify a test as well. Though respondents no.4 and 5 cleared the test as prescribed under the Rules in 5th chance whereas petitioner qualified the same in 6th chance, however, giving priority to the candidates who had qualified the test in 5th chance, their names were approved for appointment as Accountants before the claim of the petitioner, who was otherwise senior to them in the seniority list and was available for consideration. Representation made by the petitioner for redressal of his grievance also remained fruitless.

An identical issue had been gone into by Hon'ble the Supreme

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Court in **Saroj Rani and another Vs. State of Punjab and others AIR 1999 Supreme Court 3392** wherein it has been opined as under:-

> "So far the question No. (e) regarding the preference inter se between the candidates who passed the test within first five chances and the other who passed in more than five chances, we find the reasons given by the High Court in the impugned judgments including the Full Bench, Baldev Raj (supra) to be well considered, which does not call for any interference. It is not in dispute, the promotion to the post of Assistant from amongst the eligible candidate is seniority-cum-merit. Eligible candidate in this context means all those who passed the examination in less than or more than five chances. They constitute as one group. There is no division among the qualifiers either under the rules or any order. This one cohesive group has to wait for promotion till vacancy arises. The promotion from among these eligible candidates, when principle of seniority-cum-merit is to be applied, there cannot be any preference inter se among the said two groups. Thus impugned order has rightly concluded, no preference can be given to those who has qualified in first five chances over those who qualified in more than five chances.

It is not disputed that before the consideration for promotion to the higher post, petitioner had also cleared the qualifying test. The proposition of law laid down by Hon'ble the Supreme Court could not be disputed by learned counsel appearing for the respondent-State.

For the reasons mentioned above, the writ petition is allowed. The respondents are directed to consider the claim of the petitioner in terms of the law laid down by Hon'ble the Supreme Court in Saroj Rani's case (supra) and grant him all consequential benefits within four months from the date of receipt of copy of this order.

The writ petition is disposed of accordingly.

November 15, 2007 **(Rajesh Bindal)**
Pka **Judge**

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